UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/556
29 June 1992
ENGLISH

ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 556

Case No. 540: COULIBALY

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Ioan Voicu; Mr. Mikuin Leliel Balanda;

Whereas, on 30 July 1991, Adama Coulibaly, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 26 September 1991, the Applicant, after making the necessary corrections, again filed an application, in which he requested, in accordance with article 12 of the Statute of the Tribunal, revision of Judgement No. 504, rendered in his case on 26 February 1991;

Whereas the pleas of the application read as follows:

"PLEAS

I have the honour to request that you restore my rights by scrupulously complying with the Organization's statutory instruments: the United Nations Staff Rules and Regulations, and my letter of appointment.

The contested decision concerns whether the amount of 961,000 CFA francs in my letter of appointment is the monthly or annual salary. (See level G-4 step 1 in appendix B). Can the conversion of 961,000 CFA francs be equal to the gross sum of US$ 19,832?

Convinced of your strong sense of justice, and on the basis of the statutory instruments, I request that you assist me in the full restoration of my rights, as follows:

- Letter of appointment from 11 March 1986 to 10 January 1987, that is 10 months X 961,000	9 610 000
- Staff rules 109.3 (b) and 109.4 (a) (iii) 30 days' advance notice of termination:	961 000
- Personnel action form No D7G-203-708799 on separation	
- Staff rule 109.8 concerning paid leave for 20 months of employment - minimum of 30 days	961 000
- Dependent spouse as per Personnel action form No D7G-005-708799	
- Non-salaried dependent spouse at the rate of: 186,408 X 12 months	2 236 896
As per my above-mentioned letter, five children whose names are Ineïssa Coulibaly, Mohamed Coulibaly, Sidy Coulibaly, Fafa Nouhoum Coulibaly and Assitan Coulibaly at 60,390 X 5 X 12	3 623 400
Total	17 392 296

(Seventeen million, three hundred ninety-two thousand, two hundred ninety-six CFA francs) or ..... US$ 24 062

Mr. President, I should be grateful if you could help me to obtain the remaining sum under my contract in accordance with staff rule 104.12 (b).

Lastly, Mr. President, I call on you to condemn Mr. Marc Simonot, Chief of Project Mali/85/005 and his accomplices for fraud, and to impose the maximum penalty provided for in the Rules of the Administrative Tribunal. Mr. Simonot deliberately omitted the clauses of my letter of appointment.

Mr. President, I have no quarrel with the Secretary-General or the Organization but rather with Marc Simonot, who flagrantly violated staff regulations 1.3, 1.5, 1.8 and 1.9, and Article 105 of the Charter of the United Nations.

I request full reimbursement of expenses incurred in the preparation of the four (4) files that I have sent to you, and postage for my correspondence since the opening of my case."

Whereas the Respondent filed his answer on 25 October 1991, in which he requested the Tribunal to find that the Applicant had presented no new facts of such a nature as to be a decisive factor warranting correction of the Tribunal's judgement under article 12

of the Statute of the Tribunal and that the application raised issues already adjudicated in Judgement No. 504, given on 26 February 1991, which were consequently res judicata;

Whereas the Applicant filed written observations on 3 January 1992;

Whereas, on 29 May 1992, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 8 June 1992, the Applicant submitted an additional document;

Whereas the facts in the case are set out in Judgement No. 504.

The Tribunal, having deliberated from 12 to 29 June 1992, now pronouncesthe following judgement:

I. The Applicant filed his application, under the provisions of article 12 of the Statute, for review of Judgement No. 504, given by the Tribunal on 26 February 1991. In accordance with the provisions of that article, "the Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence". These are rigorous conditions on which the Tribunal has already stated its position, creating a jurisprudence in respect thereof. (Cf. Judgement No. 303, Panis (1983), para. I; Judgement No. 371, Lebaga (1986), para. I; and Judgement No. 357, Sforza-Chrzanowski (1985), para. II).

II. In the present case, the Applicant's claims to payment in lieu of notice and the reimbursement of expenses incurred in connection with the written proceedings and correspondence with the Tribunal, all constitute new claims. The Tribunal holds, moreover, that all

the remaining claims are claims which have already been made by the Applicant and which the Tribunal has adjudicated in its Judgement No. 504, referred to above.

III. The Tribunal, accordingly, finds that there is no new fact, wrongful act or error of such a nature as to justify the application for review under article 12 of the Tribunal's Statute. On the contrary, the Applicant's claims seek rather to reopen issues that were settled definitively by the above mentioned judgement, as provided for in article 10, paragraph 2, of the Statute, thus constituting res judicata. (Cf. Judgement No. 497, Silveira (1990), para. XV).

IV. As to the new claims which have only just been introduced in the present application for review and which have not been considered by the Respondent, the Tribunal is not in a position to adjudicate them.

V. Consequently, the Tribunal declares inadmissible the application for review and the new claims which the Applicant has placed before it.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Ioan VOICU
Member

Mikuin Leliel BALANDA
Member

Geneva, 29 June 1992

R. Maria VICIEN-MILBURN
Executive Secretary